

1 UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF TEXAS

3 EL PASO DIVISION

4  
5 UNITED STATES OF AMERICA ) No. EP-12-CR-2106-DB  
6 ) EP-13-CR-370-DB  
7 vs. )  
8 ) El Paso, Texas  
9 MARCO ANTONIO DELGADO )  
10 ) August 8, 2013

11 MENTAL COMPETENCY HEARING

12 A P P E A R A N C E S:

13 FOR THE GOVERNMENT: MS. DEBRA P. KANOF &  
14 MS. ANNA E. ARREOLA  
15 Assistant United States Attorneys  
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16 FOR THE DEFENDANT: MR. RAY VELARDE  
17 Attorney at Law  
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20 FOR THE DEFENDANT: MR. RICHARD ESPER  
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24 Proceedings reported by stenotype. Transcript produced by  
25 computer-aided transcription.

1 (Defendant present; open court.)

2 THE COURT: The clerk will call the cases.

3 THE CLERK: EP-12-CR-2106 and EP-13-CR-370, Marco  
4 Antonio Delgado.

5 MS. KANOF: Debra Kanof and Anna Arreola for the  
6 United States, Your Honor.

7 MR. VELARDE: Ray Velarde, Your Honor, and Richard  
8 Esper on behalf of Marco Delgado on both cases.

9 THE COURT: Well, why don't you get the Defendant up  
10 there with you.

11 MR. VELARDE: Okay.

12 THE COURT: You are Marco Antonio Delgado?

13 THE DEFENDANT: Correct.

14 THE COURT: Okay. Counsel, you've been provided with  
15 a copy of Dr. Briones's psychiatric evaluation. He has  
16 determined, "Even though Mr. Delgado is suffering from an  
17 anxiety disorder, he has a rational as well as factual  
18 understanding of the proceedings against him and has sufficient  
19 ability to consult with his attorney and to assist in his own  
20 defense with a reasonable degree of rational understanding."  
Quite frankly, that was my feeling all along.

22 Now, any reason not to concur with Dr. Briones's  
23 evaluation?

24 MR. VELARDE: None, Your Honor.

25 MS. KANOF: I have marked Government's Exhibit 1 in

1 case -- Cause Number EP-13-CR-370 and Government's Exhibit 1 in  
2 EP-12-CR-2106, I've marked the psychiatric evaluation for  
3 entering into the record, Your Honor. We move the Government's  
4 Exhibit be admitted.

5 THE COURT: Any objection?

6 MR. ESPER: No objection.

7 THE COURT: The psychiatric evaluation can be marked;  
8 will be admitted.

9 MR. ESPER: Your Honor, in connection with that  
10 report, there is a notation by Dr. Briones about a neurological  
11 exam which I think should be performed just to make sure that  
12 there are no repercussions.

13 THE COURT: Well, I'm not going to order it. If you  
14 want to pay for it yourself, maybe the marshals may. I'm not  
15 going to order any more evaluations.

16 Counsel, there's no question in my mind this man is  
17 competent. He was competent from the very beginning. He's  
18 more competent than 99 percent of the individuals that come in  
19 here before me. I'm not going to go through any other  
20 evaluation. This case is going to be set for trial. Both  
21 cases are going to be set for trial. I told you earlier today  
22 that I was considering a date of next month. I gave you a date  
23 of October 30th. I understand --

24 MS. KANOF: October the 30th?

25 MR. VELARDE: No, September the 30th.

1                   THE COURT: September the 30th. Now, you-all had  
2 requested something. I told you we would discuss it at this  
3 time.

4                   MS. KANOF: Yes, Your Honor. The -- we discussed the  
5 setting of the case looking at each other's calendars and came  
6 up with a date of October 21st. Mr. Velarde and Mr. Esper are  
7 in trial in another court on a fairly complex public corruption  
8 two-Defendant case that begins September 9th, and I don't know  
9 how long that case is going to take, but I know it's very  
10 significant. I'm familiar with the evidence. There's a lot of  
11 evidence. And I am available any time except the first week of  
12 November. The week of November 3rd I'll be on temporary duty  
13 with the department in Washington, D.C. for a week, so that's  
14 how we came to the October 21st date.

15                  We also checked on availability of witnesses because  
16 we have witnesses in foreign countries.

17                  THE COURT: On the first -- this is the first one, the  
18 first Indictment?

19                  MS. KANOF: Yes, this is the EP-12 case.

20                  THE COURT: Money laundering.

21                  MS. KANOF: The money laundering Indictment, yes, sir.

22                  THE COURT: Counsel?

23                  MR. ESPER: October 21st is fine with us.

24                  THE COURT: I want you to request it on the record. I  
25 don't want any problem with a speedy trial motion later on.

1 MR. ESPER: I'm requesting October 21st, Your Honor.

2 MR. VELARDE: And I join in that request.

3 THE COURT: On --

4 MR. VELARDE: October 21st.

5 THE COURT: Yeah. But that's on 12-CR-2106?

6 MR. ESPER: Right.

7 THE COURT: What about the other one?

8 MS. KANOF: We had discussed another date, Your Honor,  
9 but any time after the first week of November because, again  
10 I'm going to be --

11 THE COURT: Let me ask you something. How long do you  
12 anticipate it will take to try the first case?

13 MS. KANOF: Three days.

14 THE COURT: Three days.

15 MS. KANOF: Not more than a week. I don't know what  
16 the Defense has to offer, but based on the evidence as I've  
17 reviewed it, of course, the Court knows I'm new to the case,  
18 but I have thoroughly reviewed the file and I don't see more  
19 than a week at the very most.

20 THE COURT: At the most.

21 MS. KANOF: Because there's some complex forfeiture  
22 issues if we had to try them, we'd have to try the forfeiture  
23 if he's convicted to the jury as well, so as much as a week.

24 THE COURT: Okay. How long will the second one take?

25 MS. KANOF: That one is a little longer. That one has

1 some -- more complex issues and really probably not more than a  
2 week, seven days at the most.

3 THE COURT: Okay. Give me a date in November. We'll  
4 try that one in November.

5 Just for the record, October 21st is set for the trial  
6 date in Cause Number EP-12-CR-2106. In Cause Number  
7 EP-13-CR-370 --

8 THE CLERK: November 18th.

9 THE COURT: -- November 18th. Okay. Now -- the usual  
10 time of 9:00 on both.

11 I asked you to come and put on the record any offers  
12 that you may have in regards to both cases.

13 MS. KANOF: Yes, Your Honor. After an evaluation of  
14 the case, I discussed with my supervisors in San Antonio an  
15 offer, and based on the fact that the Defendant, I think it's  
16 pretty generous offer, but based on the fact that the Defendant  
17 faces 20 years on each Indictment, which can be stacked, the  
18 Government made an offer to Defense Counsel yesterday of nine  
19 years on each Indictment to run concurrent on an 11(c)(1)(C).  
20 And that's -- and it's below the guidelines as well, but, of  
21 course, saving the time and money, the Government is --

22 THE COURT: Is that your understanding, Counsel?

23 MR. VELARDE: Your Honor, we were advised of this  
24 yesterday and we broached the subject with Mr. Delgado earlier  
25 today. We would like to continue our visit with him

1 regarding--

2 THE COURT: I understand. I'm not going to make  
3 you -- I don't need a commitment from you right now --

4 MR. VELARDE: Yes, sir.

5 THE COURT: -- but I do want to set a time limit.

6 MS. KANOF: Oh, we did. We actually negotiated an  
7 *Ellis* deadline as well, Your Honor, but that was before we knew  
8 the actual trial date, but assuming we were going to go to  
9 trial on the 21st, our *Ellis* deadline is September 15th,  
10 correct? September 15th.

11 MR. ESPER: The 15th is a Sunday.

12 MS. KANOF: Oh, okay, so the 13th.

13 THE COURT: The what?

14 MS. KANOF: September 13th, which is a Friday.

15 THE COURT: September the 15th?

16 MS. KANOF: The 13th, which is a Friday.

17 THE COURT: The 13th.

18 MS. KANOF: The 16th is a Monday.

19 MR. VELARDE: Can we make it on Monday the 16th?

20 MS. KANOF: Okay. Monday the 16th. We're in  
21 agreement, Your Honor, as the *Ellis* deadline.

22 THE COURT: 16th de Septiembre it is.

23 MS. KANOF: *Muy bien.*

24 THE COURT: If he doesn't accept it, I -- you leave it  
25 open until then.

1 MS. KANOF: I will, Your Honor.

2 THE COURT: Okay.

3 MS. KANOF: Yes.

4 THE COURT: Anything else we need now, Counsel?

5 MR. ESPER: Nothing more, Your Honor.

6 THE COURT: Mr. Velarde --

7 MR. VELARDE: Mr. Delgado, Your Honor, is --

8 THE COURT: -- you looked perplexed.

9 MR. VELARDE: Mr. Delgado is self-insured. We have  
10 the ability to pay for the neurological exam and we're going to  
11 make arrangements through the family to obtain the neurological  
12 exam. All I'm asking of the Court is to please assist us in  
13 facilitating that.

14 THE COURT: File your motion.

15 MR. VELARDE: Thank you very much.

16 MS. KANOF: The Government, by the way, has no  
17 objection, Your Honor, because the Government is always  
18 thinking based on the recommendation of Dr. Briones of a 2255,  
19 so in order to save Steve Garcia any work, we are concurring  
20 that they pay for a neurological.

21 THE COURT: Okay. File your motion and I'll take it  
22 up with the marshals.

23 MR. VELARDE: Thank you very much.

24 MR. ESPER: Your Honor, may I approach side-bar with  
25 your clerk on another matter?

1 THE COURT: Yes.

2 You-all may be excused.

3 MS. KANOF: Thank you, Your Honor.

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9 CERTIFICATION

10  
11 I certify that the foregoing is a correct transcript from  
12 the record of proceedings in the above-entitled matter. I  
13 further certify that the transcript fees and format comply with  
14 those prescribed by the Court and the Judicial Conference of  
15 the United States.

16  
17 Date: March 24, 2014

18 /s/ Maria del Socorro Briggs

19 Maria del Socorro Briggs